

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-314-C - ORDER NO. 97-64
JANUARY 23, 1997

| | | | |
|--------|--|---|---------------|
| IN RE: | Application of DeltaCom, Inc. for a |) | ORDER |
| | Certificate of Public Convenience and |) | APPROVING |
| | Necessity to Provide Local Exchange |) | CERTIFICATE |
| | Telecommunications Services throughout |) | TO PROVIDE |
| | the State of South Carolina. |) | LOCAL SERVICE |

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the application of DeltaCom, Inc. ("DeltaCom" or "the Company"). The Application requests that the Commission grant a Certificate of Public Convenience and Necessity for the Company to provide local exchange telecommunications services throughout the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (as amended by Act No. 354, 1996 S.C. Acts), and the Regulations of the Commission.

By letter dated October 15, 1996, the Commission's Executive Director instructed DeltaCom to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. DeltaCom complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

Petitions to Intervene were received from BellSouth Telecommunications, Inc. ("BellSouth"), the Consumer Advocate for the State of South Carolina ("the Consumer Advocate"), and the South Carolina Telephone Coalition ("SCTC").

A hearing was convened on January 8, 1997, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. DeltaCom was represented by B. Craig Collins, Esquire; the Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire; SCTC was represented by Margaret M. Fox, Esquire; and the Commission Staff ("Staff") was represented by Florence P. Belser, Staff Counsel. BellSouth did not appear at the hearing.

Prior to the hearing, DeltaCom and the SCTC executed a Stipulation dated December 20, 1996. The Stipulation provides the following:

- (1) The SCTC did not oppose the granting of a statewide Certificate of Public Convenience and Necessity to DeltaCom if the Commission made the necessary findings to grant the Certificate and if all stipulated conditions are met;
- (2) DeltaCom agreed that any Certificate granted by the Commission will authorize DeltaCom to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;
- (3) DeltaCom agreed that it did not request the Commission to find whether competition is in the public interest for rural areas;
- (4) DeltaCom agreed that it would not provide local service,

by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until DeltaCom provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. DeltaCom also acknowledged that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;

(5) DeltaCom agreed that if, after DeltaCom gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then DeltaCom will not provide service to any customer located within the service area in question without prior and further Commission approval;

(6) DeltaCom acknowledged that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long

as such policies, procedures and guidelines do not conflict with Federal or State law;

(7) DeltaCom and the SCTC agreed that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and

(8) DeltaCom agreed to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and DeltaCom and was filed with the Commission prior to the hearing in this matter. We therefore accept the stipulation.

In support of its Application, DeltaCom presented Foster O. McDonald to testify. McDonald is the President of DeltaCom. The purpose of McDonald's testimony was to (1) describe DeltaCom's corporate structure; (2) describe the financial, technical, and managerial resources of DeltaCom in order to show that DeltaCom has resources, experience, and ability to provide the services described in the Application; (3) describe the Application; and (4) comment on the public need for, and the public benefits of, DeltaCom's proposed intrastate service. McDonald testified that DeltaCom proposes to operate initially as a reseller of telecommunications services in South Carolina and plans to utilize

the switching facilities of underlying carriers with facilities and equipment owned and/or operated by the underlying carriers. McDonald stated that DeltaCom eventually intends to provide local services on its own network acquired either through construction, acquisition and/or lease of facilities.

DISCUSSION

S.C. Code Ann. §58-9-280 (as amended by Act No. 354, 1996 S.C. Acts) provides that the Commission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC.

After full consideration of the applicable law, DeltaCom's Application, and the evidence presented at the hearing, the Commission finds and concludes that the Certificate sought by DeltaCom should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (as amended by Act No. 354, 1996 S.C. Acts) and the evidence presented which relates to that criteria:

(1) The Commission finds that DeltaCom possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1). To demonstrate DeltaCom's technical qualifications, witness McDonald testified that DeltaCom has provided long distance telecommunications services since 1982 and has owned and operated a statewide fiber optic and microwave network in Alabama. The Commission granted a Certificate of Public Convenience and

Necessity to DeltaCom to provide resold interexchange telecommunications services within South Carolina by Order No. 96-127 dated February 22, 1996, in Docket No. 95-1208-C. Further, Mr. McDonald stated that initially, as a reseller of local services, DeltaCom will rely upon the technical expertise of the underlying carrier. Concerning DeltaCom's managerial qualifications, McDonald testified that DeltaCom's management team has considerable experience in executive telecommunications management and operational experience. Regarding DeltaCom's financial resources, McDonald stated that DeltaCom is a wholly owned subsidiary of ITC Holding Company, Inc., a privately-held Georgia corporation. He further stated that DeltaCom has a stable financial setting in which to provide its telecommunications services and offered that DeltaCom has available the financial resources to permit DeltaCom to offer the services for which it seeks authority. No party offered any evidence in opposition to McDonald's testimony. Based on the undisputed testimony of McDonald, the Commission finds that DeltaCom possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that DeltaCom will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (as amended by Act No. 354, 1996 S.C. Acts). McDonald testified that DeltaCom seeks to provide intrastate local exchange services. McDonald specifically stated that DeltaCom will comply with all applicable rules, policies, and statutes

applicable to the offering of those services and that DeltaCom fully intends to meet the Commission's service standards. McDonald also testified to the Company's ability to quickly handle customer service and repair requests. As well, he assured the Commission that DeltaCom would maintain a regulatory contact person as required by Commission regulation. No party offered any evidence to dispute McDonald's testimony. Based on the undisputed testimony from McDonald, the Commission believes, and so finds, that DeltaCom will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that DeltaCom's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (as amended by Act No. 354, 1996 S.C. Acts). The record shows that DeltaCom believes that availability of affordable local service will increase with DeltaCom's admittance into the local market. McDonald's prefiled testimony reveals that DeltaCom anticipates that approval of its Application will increase competition for basic local exchange services which will offer customers in South Carolina a wider range of product offerings, innovative technologies, increased quality, and lower prices for local telecommunications services. No party offered any evidence that the provision of local exchange service by DeltaCom would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by DeltaCom will not adversely impact affordable

local exchange service.

(4) The Commission finds that DeltaCom will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (as amended by Act No. 354, 1996 S.C. Acts). McDonald testified that DeltaCom fully intends to comply with the Commission's universal service requirements and will contribute to universal service mechanisms on the state and federal levels as the universal service mechanisms may apply to DeltaCom. No party disputed McDonald's testimony. Based on the undisputed evidence of record, the Commission finds that DeltaCom will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by DeltaCom "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (as amended by Act No. 354, 1996 S.C. Acts). McDonald offered that the competition of DeltaCom offering services in South Carolina will benefit customers. Further, McDonald offered that competition will promote improvements such as innovative technologies to telecommunications services. McDonald's testimony was undisputed as no party offered any evidence that approval of DeltaCom's Application would adversely impact the public interest. Therefore, the Commission finds that approval of DeltaCom's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (as amended by Act No. 354, 1996 S.C.

Acts).

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by DeltaCom should be granted.

IT IS THEREFORE ORDERED THAT:

1. The Application of DeltaCom for a Certificate of Public Convenience and Necessity to allow DeltaCom to provide resold and facilities-based intrastate local exchange services in South Carolina is approved. DeltaCom is hereby authorized to provide intrastate resold and facilities-based local exchange service in South Carolina.

2. DeltaCom shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes to the proposed tariff to which DeltaCom agreed with the Commission Staff.

3. DeltaCom shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and repairs. In addition, DeltaCom shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. DeltaCom shall file with the Commission the names, addresses, and telephone numbers of these representatives within thirty (30) days of

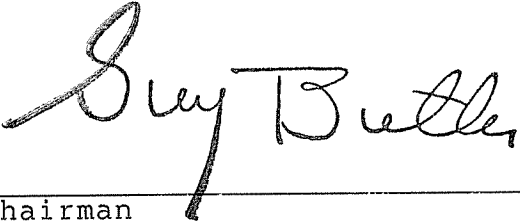
receipt of this Order. Further, DeltaCom shall promptly notify the Commission in writing if the representatives are replaced. DeltaCom is directed to comply with all Commission regulations unless expressly waived by the Commission.

4. DeltaCom shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. The Stipulation filed by DeltaCom and the SCTC is approved by this Commission, is binding upon DeltaCom and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)